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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,690	09/11/2000	Mark John Berry	PM271641	9282

9629 7590 04/06/2004

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EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/600,690.

Applicant(s)

BERRY ET AL.

Examiner

EVERETT WHITE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 16, 2004 has been entered.
2. The amendment filed January 16, 2004 has been received, entered and carefully considered. The amendment affects the instant application accordingly:
 - (A) Claims 2-4 have been canceled.
 - (B) New Claims 12-15 have been added.
 - (C) Claims 1, 5, 7, 8, 10, and 11 have been amended.
 - (D) Comments regarding Office Action have been provided drawn to:
 - (a) 102(e) rejection, which has been maintained for the reasons of record;
 - (b) 103(a) rejection, which has been maintained for the reasons of record; the rejection of the claims over the Ibe patent is withdrawn.
3. Claims 1 and 5-15 are pending in the case.
4. The text of those sections of Title 35, U. S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

5. Claims 1 and 5-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Cottrell et al (US Patent No. 5,801,116, already of record).

Applicants claim a conjugate comprising a polysaccharide selected from the group consisting of xyloglucans, glucomannans, mannans, galactomannans, β (1-3,(1-4) glucan and the xylan family incorporating glucurono-, arabino- and glucuronoarabinoxylan, which is chemically or physically attached to a particle which is of composition different from said polysaccharide and which carries absorbed, adsorbed, impregnated or encapsulated perfume, the polysaccharide being capable of binding said conjugate to

cellulose. Applicants also claim a conjugate comprising a polysaccharide, which is chemically or physically attached to a porous silica particle carrying perfume absorbed therein. Additional limitations in the dependent claims include further specific polysaccharides; a product incorporating the conjugate comprising the polysaccharide; a specific type of product; and a method of targeting binding of a particle carrying perfume to cellulose.

The Cottrell et al patent discloses a polysaccharide composition that comprises absorbent properties and is useful in absorbent articles of manufacture. See the last line of column 2 to column 3, line 4 of the Cottrell et al patent, wherein the polysaccharide may be selected as polygalactomannans such as guar gum and locust bean gum. This paragraph also indicates that the polysaccharide materials may be combined with other known materials that include carbohydrates. See column 8, 4th paragraph of the Cottrell et al patent wherein a list of materials that can be combined with the absorbent polysaccharides that include cellulose fiber, cellulose fluff, and cellulose grafted polymers, which anticipates the polysaccharide conjugate being capable of binding to the cellulose. The Cottrell et al patent further discloses liquids that can be added to the compositions thereof to form absorbent materials for products for a wide variety of use that include cosmetics (see column 8, line 59). See column 9, lines 31 and 32 of the Cottrell et al patent wherein specific uses of the compositions in cosmetics products include fragrance retention agent and fragrance releasing gel, which anticipates the polysaccharide conjugate of the instant claims being chemically or physically attached to a particle carrying perfume. Also, see column 8, 6th paragraph wherein Cottrell et al discloses that for ultimate use as an absorbent material the polysaccharides of the present invention may be combined with one or more of the listed additive materials to provide a preferred commercial product, the list of additive materials include silica, which anticipates the silica set forth in instant Claim 12.

6. Applicant's arguments filed January 16, 2004 have been fully considered but they are not persuasive. Applicants argue against the rejection of the claims over the Cottrell et al patent on the grounds that Applicants do not agree that a particle carrying perfume is attached to the polysaccharide in the Cottrell et al patent and argues that the perfume

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in the Cottrell et al patent is absorbed by the polysaccharide itself. The argument is not persuasive since there is no distinction between the perfume being attached to the polysaccharide and the perfume being absorbed by the polysaccharide. Applicants have not defined the term "particle" in instant Claim 1 or the claims depending from Claim 1, which would distinguish the perfume absorbed by the polysaccharide in the Cottrell et al patent and a particle comprising absorbed perfume, which is attached to the polysaccharide. Newly added Claim 12 sets forth a silica particle carrying perfume absorbed therein. However, the Cottrell et al patent also discloses silica as an additive to complement the absorbent properties of the composition of the Cottrell et al patent (see column 8, 6th paragraph), which anticipates the subject matter of instant Claim 12. See column 7, last paragraph, wherein the Cottrell et al patent discloses that the compositions thereof may be combined with other chemicals or physical materials (which include the silica) to provide potential synergistic absorbency properties. Accordingly, the rejection of Claims 1 and 5-12 under 35 U.S.C. 102(e) as being anticipated by the Cottrell et al patent is maintained for the reasons of record.

Claim Rejections - 35 USC § 103

7. Claims 1 and 5-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottrell et al (US Patent No. 5,801,116).

Applicants claim a conjugate comprising a polysaccharide selected from the group consisting of xyloglucans, glucomannans, mannans, galactomannans, β (1-3,(1-4) glucan and the xylan family incorporating glucurono-, arabino- and glucuronoarabino-xylan, which is chemically or physically attached to a particle which is of composition different from said polysaccharide and which carries absorbed, adsorbed, impregnated or encapsulated perfume, the polysaccharide being capable of binding said conjugate to cellulose. Applicants also claim a conjugate comprising a polysaccharide, which is chemically or physically attached to a porous silica particle carrying perfume absorbed therein. Additional limitations in the dependent claims include further specific polysaccharides; a product incorporating the conjugate comprising the polysaccharide;

a specific type of product; the particle having a specific amount of perfume; and a method of targeting binding of a particle carrying perfume to cellulose.

The Cottrell et al patent discloses a polysaccharide composition that comprises absorbent properties and is useful in absorbent articles of manufacture. See the last line of column 2 to column 3, line 4 of the Cottrell et al patent, wherein the polysaccharide may be selected as polygalactomannans such as guar gum and locust bean gum. This paragraph also indicates that the polysaccharide materials may be combined with other known materials that include carbohydrates. The polygalactomannans disclosed in the Cottrell et al patent include compounds that have side chain galactose residues (see column 4, 1st paragraph), which would expect to be susceptible to oxidation by galactose oxidase as set forth in instant Claim 6. See column 8, 4th paragraph of the Cottrell et al patent wherein a list of materials that can be combined with the absorbent polysaccharides that include cellulose fiber, cellulose fluff, and cellulose grafted polymers, which embraces "the polysaccharide conjugate being capable of binding to cellulose" of the instant claims. Cottrell et al also teaches the use of several types of polygalactomannans (see column 4, 1st paragraph) that can be used as the polysaccharide component of the composition, which embraces the tara galactomannan and cassia galactomannan set forth in instant Claim 5. The Cottrell et al patent further discloses liquids that can be added to the compositions thereof to form absorbent materials for products for a wide variety of uses, which include cosmetics (see column 8, line 59). See column 9, lines 31 and 32 of the Cottrell et al patent wherein specific uses of the compositions in cosmetic products include fragrance retention agents and fragrance releasing gels, which embraces the polysaccharide conjugate of the instant claims which requires chemical or physical attachment of the polysaccharide to a particle carrying perfume. Also, see column 8, 6th paragraph wherein Cottrell et al discloses that for ultimate use as an absorbent material the polysaccharides of the present invention may be combined with one or more of the listed additive materials to provide a preferred commercial product, the list of additive materials include silica, which embraces the silica set forth in instant Claim 12. The instant claims differ from the Cottrell et al patent by indicating that the product may be selected as a fabric washing

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product and fabric conditioning product (see instant Claim 9). However, the phrases "fabric washing" and "fabric conditioning" only indicates how the product will be used. A difference in intended use cannot render a claimed composition novel. Note *In re Tuominen*, 213 USPQ 89 (CCPA, 1982); *In re Pearson*, 494 F2d 1399; 181 USPQ 641 (CCPA, 1974); and *In re Hack* 114 USPQ 161. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the instantly claimed polysaccharide conjugated to a perfume particle because the Cottrell et al patent discloses the components of the instantly claimed composition and explicit motivation to use said components, specifically a polysaccharide and a perfume particle to facilitate preparation of fragrance retention agent containing compositions of matter.

8. Applicant's arguments filed January 16, 2004 have been fully considered but they are not persuasive. The arguments presented above for anticipation of the Cottrell et al patent over the instant claims is incorporated with the obvious rejection of the claims over the Cottrell et al patent under 35 U.S.C. 103(a). The rejection of Claims 1 and 5-15 under 35 U.S.C. 103(a) as being unpatentable over the Cottrell et al patent is maintained for the reasons of record.

9. Claim 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cottrell et al (US Patent No. 5,801,116) for the reason set forth on pages 6 and 7 in the Office Action filed January 3, 2003.

10. Applicant's arguments filed January 16, 2004 have been fully considered but they are not persuasive. The rejection of Claim 10 rises and falls with the rejection of Claims 1 and 12, which Claim 10 is dependent from. The rejection of Claims 1 and 12 over the Cottrell et al is maintained and therefore the rejection 10 is also maintained.

Summary

11. All the pending claims (Claims 1 and 5-11) are rejected.

Action Made Final

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Examiner's Telephone Number, Fax Number, and Other Information

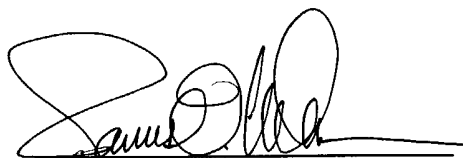
14. For 24 hour access to patent application information 7 days per week, or for filing applications, please visit our website at www.uspto.gov and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is (571) 272-0660. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached on (571) 272-0661. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.


E. White


James O. Wilson
Supervisory Primary Examiner
Technology Center 1600